



Archive Legislation:

Email archiving in the Netherlands

The key laws that affect your business

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Email is a primary source of documentation for many organizations and it has taken on an increasingly critical role in corporate litigation and court cases.

The need to archive all email correspondence is growing in importance because companies are realizing that being in a position to retrieve an old email could save them thousands of dollars (euros) in legal fees and fines as well as their credibility.

Today, more than ever before, legal and compliance issues are driving the case for email archiving. Email archiving legislation is complex and varies greatly from country to country. Unless companies are well versed in compliance and email compliance law, the various regulations affecting email can be a minefield.

This document provides an overview of the archiving legislation in your country.

Laws regulating archiving

The laws of The Netherlands do not impose a duty on small and medium-sized businesses to archive email in general.

Nonetheless there are various reasons why small and medium-sized businesses should consider archiving their email, after all.

- All businesses are obliged to keep an administration sufficient to be able to assess their rights and obligations at all times. These data must be retained for a minimum of 7 years (Articles 2:10 of the Dutch Civil Code (DCC)). This obligation to retain data only applies to emails that by content or attachment, must be considered (part of) the administration of the company.
- If information regarding the financial position of the business relevant to the levying of taxes is exclusively contained in emails, these emails must be retained for a minimum of 7 years. (Article 52 Dutch State Taxes Act (DSTA)).

Violation of these duties constitutes a criminal offence (Article 342 and 343 of the DPC and Article 68, subsection 2 of the DSTA) and may lead to directors' and officers' liability (Article 2:9, 2:138 and 248, subsections 2 DCC).

- Businesses providing professional services are in principle obliged to return any documents received from their clients, to their clients upon request. Since the client's claim for surrender of these documents prescribes after 5 years, it is advisable to keep the relevant emails for a minimum of 5 years. (Article 7:412 DCC)
- Dutch law of civil procedure has an open system of evidence (Article 152 Dutch Code of Civil Procedure). This means that in principle any document, including emails, can be submitted as evidence. However, the court is free to decide whether or not the document has any value as evidence, unless the law provides otherwise. Businesses can improve the value of their emails as evidence, by storing them in an archiving system that enables them to demonstrate the authenticity and integrity of the emails.

- Article 3:310 DCC stipulates that any claim for damages prescribes 5 years after the claimant has become aware of both the damage and the liable person. As such the date at which this 5 year term starts to run, is uncertain. It is therefore advisable to retain emails potentially relevant to claims much longer than 5 years.

Who is required to archive email?

Please note that in The Netherlands companies employing over 50 persons are obliged to establish a works council. Since GFI MailArchiver, according to the documentation we received, can be used for internal inquiries and employee monitoring, consent of the works council may be required before installation thereof (Article 27 Dutch Works Councils Act).

Businesses using GFI MailArchiver should be aware that a collection of emails stored in I by means of GFI MailArchiver is likely to be considered a personal data filing system and the retrieval of emails therefore a form of processing of personal data. The Dutch Data Protection Act (DPA) imposes several obligations on businesses that control or process personal data, not limited to the obligation to take any appropriate technical and organisational measures against unlawful processing of personal data (Article 13 DPA) and the obligation to provide information on stored personal data and the use thereof to the person concerned (Article 33 DPA).

GFI Archiver

GFI Archiver is used by thousands of administrators worldwide to comply with legislation on email archiving. GFI Archiver provides a secure, tamper-proof central storage for all company email and files while allowing fast and easy access to all archived items if required.

Using the auditing functionality, management can access any email that is requested for eDiscovery/ email compliance purposes and provide a guarantee that these emails have not been tampered with – a major requirement in corporate litigation cases.

With GFI Archiver, companies can:

- Gain instant access anytime, anywhere to business critical emails, calendar entries and files via Outlook, laptop, smartphone or tablet. Retrieve old and deleted emails on demand - with full thread and conversation without any intervention needed from ITPublic Sector organisations and any other company or organisation that holds information on behalf of a public sector organisation
- Use advanced email search and 'Saved Search' capabilities
- Archive files and folders and share between different users and teams to enable collaboration on different projects
- Maximize compliance and minimize legal risk with a complete, tamper-proof archive of all company email and files

The benefits for IT administrators:

- Reduce reliance on unreliable PST files and centrally store all archived items in one central database
- Free up space and resources on your mail servers by storing archived emails in a separate database. GFI Archiver is a stub-free solution and therefore does not impact your mail server performance
- Reduce user requests for retrieval of old emails or files from backup through the web-based GFI Archiver interface
- Avoid relying on third-party storage and sharing providers because your email and file archive is stored on premise, in your own environment
- Use the email setup you require, this includes Microsoft® Exchange, Office 365™, Google Apps™ and other email servers, because GFI Archiver works seamlessly with them.

More information about GFI MailArchiver can be found at <http://www.gfi.com/archiver/>.



For a full list of GFI offices/contact details worldwide,
please visit: www.gfi.com/contact-us

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